

UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

**NANCY B. BISSELL AND
ROBERT G. BISSELL, M.D.,**

PLAINTIFFS

v.

**THE BREAKERS BY-THE-SEA,
R & E ASSOCIATES, INC. AND
PAUL PROVENCHER,**

DEFENDANTS

CIVIL No. 96-191-P-H

ORDER ON PLAINTIFFS' RULE 60(b) MOTION

By Order of Court dated March 4, 1998, I received a remand of this case from the Court of Appeals for the First Circuit to develop the record on the plaintiffs' domicile (for diversity jurisdiction purposes) and to rule on the plaintiffs' Rule 60(b) motion for relief from judgment. After discovery and investigation, the defendants have now notified the court by letter of June 22, 1998, that they no longer seek an evidentiary hearing because they have learned that even if they successfully challenge Mrs. Bissell's asserted domicile in Tortola, British Virgin Islands, the conclusion would be that she was a resident and citizen of Maine at the time the complaint was filed. This would still defeat diversity jurisdiction since the defendants were also residents of Maine.

Accordingly, no further proceedings in the trial court are required; my Memorandum Statement on Plaintiffs' Motion for Relief from Judgment of February 3, 1998, also on a limited remand, see Commonwealth of Puerto Rico v. SS Zoe Colocotroni, 601 F.2d 39, 42 (1st Cir. 1979), is operative, stating that, if the case is remanded to me I would be compelled under existing

precedents to grant the Rule 60(b) motion and dismiss the lawsuit without prejudice for lack of diversity subject matter jurisdiction. When I entered the Memorandum Statement on February 3, 1998, I believed my only jurisdiction, under SS Zoe Colocotroni, 601 F.2d at 42, was either to deny the motion or to inform the Court of Appeals that I would grant the motion if I received a complete remand. The latest remand of March 4, 1998, makes clear that I actually have authority to grant the Rule 60(b) motion and vacate the “the June 10, 1997 order.” This order, however, is my order denying the plaintiffs’ motion for a new trial, not the judgment in the defendants’ favor (dated March 31, 1997), the subject of the plaintiffs’ Rule 60(b) motion. I treat the omission of reference to the judgment as simply a misstatement. Accordingly, the plaintiffs’ Rule 60(b) motion is **GRANTED**, and judgment is **VACATED**, and the case is **DISMISSED** without prejudice.

SO ORDERED.

DATED THIS 1ST DAY OF JULY, 1998.

D. BROCK HORNBY
UNITED STATES CHIEF DISTRICT JUDGE